

U.S. DISTRICT JUDGE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
TACOMA DIVISION

KEITH KOENEN,

Plaintiff,

vs.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Civil No. 3:19-cv-05110-TSZ

STIPULATED RESPONSE TO MOTION
FOR FEES

Note on Motion Calendar: November 1, 2021.

Plaintiff seeks an award of attorney fees under the (EAJA), 28 U.S.C. § 2412 *et seq.* After Plaintiff filed the present motion, the parties engaged in good faith negotiations. Defendant, the Acting Commissioner of Social Security (Commissioner), by her undersigned counsel, and Plaintiff, by his counsels, Elie Halpern, now agree and stipulate as follows:

1. Plaintiff was the prevailing party in this matter;
2. Plaintiff was an individual whose net worth did not exceed \$2,000,000 at the time the civil action was filed;
3. The position of the Commissioner was not substantially justified;
4. An award of fees is not unjust;
5. An award of \$6,132.36 in fees to Jeff Baird constitutes reasonable attorney fees in this matter;

- 1 6. An award of \$7.28 constitutes reasonable expenses in this matter; and
- 2 7. Payment of these amounts shall constitute a complete release from and bar to any and all
- 3 claims Plaintiff may have relating to EAJA fees in connection with this action. The parties
- 4 further agree that the EAJA award is without prejudice to the right of Plaintiff's attorney to
- 5 seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to
- 6 the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1) (2006).
- 7 8. Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this Court
- 8 belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C.
- 9 § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to Plaintiff and not to
- 10 Plaintiff's attorney. If, after receiving the Court's EAJA fee order, the Commissioner (1)
- 11 determines that Plaintiff has assigned his right to EAJA fees to his attorney; (2) determines
- 12 that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program,
- 13 and (3) agrees to waive the requirements of the Anti-Assignment Act, then the EAJA fees
- 14 will be made payable to Plaintiff's attorney via check or electronic fund transfer. However,
- 15 if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree
- 16 to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after
- 17 offset will be paid by a check or electronic fund transfer to Plaintiff but delivered to
- 18 Plaintiff's attorney.

19 DATED this 1st day of November 2021.

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Respectfully submitted,

s/ Thomas M. Elsberry

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DATED this 1st day of November 2021.

s/ Thomas M. Elsberry for

ELIE HALPERN
Attorney for Plaintiff
(PER AUTHORIZATION)

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Stipulated Response to Motion for Fees was filed with the Clerk of the Court on November 1, 2021, using the CM/ECF system which will send notification of such filing to the following: Elie Halpern.

s/ Thomas M. Elsberry

THOMAS M. ELSBERRY
Special Assistant United States Attorney
Office of the General Counsel

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ORDER

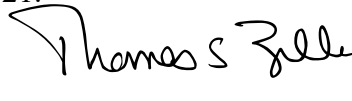
For the reasons set forth in the parties' stipulated motion, docket no. 27, for attorney fees under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, *et seq.*, and good cause shown, IT IS HEREBY ORDERED AS FOLLOWS:

1. Plaintiff is here by awarded \$6,132.36 in fees to Jeff Baird and \$7.28 in expenses under the EAJA.
2. Under *Astrue v. Ratliff*, 130 S. Ct. 2521, 2528-29 (2010), EAJA fees awarded by this Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C. § 3716(c)(3)(B) (2006)). Any EAJA fees should therefore be awarded to Plaintiff and not to Plaintiff's attorney. If, after receiving the Court's EAJA fee order, the Commissioner (1) determines that Plaintiff has assigned his right to EAJA fees to

his attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program, and (3) agrees to waive the requirements of the Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney via check or electronic fund transfer.

3. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the requirements of the Anti-Assignment Act, and the remaining EAJA fees after offset will be paid via check or electronic fund transfer to Plaintiff but delivered to Plaintiff's attorney.

DATED this 8th day of November, 2021.



Thomas S. Zilly
United States District Judge

Presented by:

s/ Thomas M. Elsberry
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